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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/689,424	10/12/2000	Josch P. Tunney	47440-018000	7532

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PERRIN, JOSEPH L

[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

1746

DATE MAILED: 07/02/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/689,424	TUNNEY ET AL. <i>QF3</i>
	Examiner	Art Unit
	Joseph Perrin	1746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 12 October 2000.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-8 and 16-20 is/are rejected.

7) Claim(s) 9-15 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 .	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities: On page 3, line 30, there appears to be a claim (claim 14). This should be removed.

Appropriate correction is required.

### *Claim Objections*

2. Claims 14-15 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 14-15 merely recite a future intended use and, therefore, fail to provide any further structural limitation to the claimed system.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 6, 7 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 is considered vague and indefinite. The phrase "a second section" in line 2 is confusing. Is there a first section of the first pipe? Appropriate correction and clarification is required.

Claim 7 is considered vague and indefinite. The phrase "liquid pipe" is confusing. Is this the same pipe in which gaseous nitrogen flows through a first valve? It is unclear what is meant by "liquid" pipe. Clarification and correction is required.

Claim 10 recites the limitation "the protective housing" in line 1. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1-8 and 16-20 rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,168,709 to Bombard in view of US 5,813,849 to Schwartz et al.

Bombard discloses a mobile/portable drying and ventilation system having a container with a quantity of chemicals and a plurality of valves, a heating means (109) which heats the intake pipe and ventilation (76), a boiler (121), a valve means for controlling pressure, and a control panel with switches (see Bombard, for instance, col. 2, lines 63-68, col. 3, line 43, and Figures 1-7). Bombard also discloses utilizing air (comprising nitrogen) and lowering hazardous exhaust emission, but Bombard does not expressly disclose utilizing a nitrogen storage tank, a flare, or the mobile container being a rail car tank.

Schwartz et al. teaches that it is known to utilize gas-blanketed storage tanks with inert gas, such as nitrogen, a flare, conventional vapor recovery loading nozzles (pipes), and control means with a plurality of switches, in order to safely dispose exhaust gases in the removal of volatile liquids from a mobile rail car tank (see Gammell, for instance, Figure 1, col. 2, lines 46-63, col. 3, lines 29-32, and col. 8, lines 14-26). Therefore, the position is taken that a person of ordinary skill in the art at the

time the invention was made would have been motivated to modify the mobile, drying ventilation system disclosed by Bombard, with the rail car tank drying ventilation system disclosed by Schwartz et al. for the purpose of providing a rail car tank drying system with reduced hazardous emissions.

#### ***Allowable Subject Matter***

Claims 9-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record does not teach or suggest the claimed system having a protective housing with a plurality of valves and sideports, a pressure plate located on top of the container, or a platform adjacent to the top of the container.

#### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 5,813,849 to Schwartz et al., which discloses a flare for combustion of volatile chemicals.

US 3,756,170 to Lang, which discloses a flare for combustion of volatile chemicals.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Perrin whose telephone number is (703)305-0626. The examiner can normally be reached on M-F 7:30-5:00, except alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on (703)308-4333. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

Joseph Perrin  
Examiner  
Art Unit 1746

jlp  
June 24, 2002



RANDY GULAKOWSKI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700